

IP 03-0148-CR 7 B/F USA v Turner  
Magistrate Kennard P. Foster

Signed on 06/13/06

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DEBRA D. TURNER, )  
 )  
 Defendant. )

Cause No. IP 03-148-CR-07 (B/F)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Cause No. IP 03-148-CR-07 (B/F)
	)	
DEBRA D. TURNER,	)	
	)	
Defendant.	)	

**MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable Sarah Evans Barker, Judge, on June 2, 2006, designating this Magistrate Judge to conduct hearings on the Petition for Summons or Warrant for Offender Under Supervision filed with the Court on May 18, 2006, and to submit to Judge Barker proposed Findings of Facts and Recommendations for disposition under Title 18 U.S.C. §§3401(i) and 3583(e).

Proceedings were held on June 9, 2006, in accordance with Rule 32.1 of the *Federal Rules of Criminal Procedure*, before Magistrate Judge Tim A. Baker. At the proceedings on June 9, 2006, Ms. Turner appeared in person with his appointed counsel, William Dazey, Office of the Indiana Federal Community Defender; the government appeared by Joe Vaughn, Assistant United States Attorney, for Steve DeBrotta, Assistant United States Attorney; and U. S. Parole and Probation appeared by Troy Adamson, U. S. Parole and Probation officer, who participated in the proceedings.

On June 9, 2006, the Court conducted the following procedures in accordance with Rule 32.1(a)(1) *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583:

1. William Dazey, Office of Indiana Federal Community Defender, was present and appointed by the Court to represent Ms. Turner in regard to the pending Petition for Revocation of Supervised Release.

2. A copy of the Petition for Revocation of Supervised Release was provided to Ms. Turner and her counsel who informed the Court that they had read and understood the specification of violations and waived further reading thereof.

3. Ms. Turner was advised of her right to a preliminary hearing and its purpose in regard to the alleged specified violations of her supervised release contained in the pending Petition, filed May 18, 2006.

4. Ms. Turner would have a right to question witnesses against her at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. Ms. Turner had the opportunity to appear at the preliminary hearing and present evidence on her own behalf.

6. If the preliminary hearing resulted in a finding of probable cause that Ms. Turner had violated an alleged condition or conditions of her supervised release set forth in the Petition, she would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Barker's designation entered on June 2, 2006.

7. Mr. Dazey stated that Debra D. Turner was not prepared to proceed further on that date and requested a continuance of the proceedings. Ms. Turner's request was granted and she was ordered detained pending further proceedings.

8. The preliminary hearing and any other required proceedings were then set for June 12, 2006 before the undersigned Magistrate Judge.

On June 12, 2006, the defendant appeared in person and with her appointed counsel, William Dazey, Office of the Indiana Federal Community Defender; the government appeared by Gayle Helart, Assistant United States Attorney, for Steve DeBrot, Assistant United States Attorney; and U. S. Parole and Probation appeared by Bob Akers, for Dwight Wharton. The Court conducted the following proceedings, in accordance with Rule 32.1(a)(1) *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583:

1. Ms. Turner executed a written waiver of the preliminary examination, which was accepted by the Court.

2. Ms. Turner, by counsel, stipulated that she committed specifications of violations set forth in the Petition for Warrant or Summons for an Offender Under Supervision, filed with the Court on June 2, 2006 as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	<b>The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician.</b>
2	<b>The defendant shall participate in a program of testing and/or treatment for substance abuse and shall pay a portion of the fees of treatment as directed by the probation officer.</b>

On April 19, 2005, the Court issued a warrant for Ms. Turner's arrest for the following violations: cocaine use (12/8/04 and 3/25/05); failure to secure employment; and absconding from supervised release (please reference Petition for Warrant dated 4/15/05). She remained a fugitive until she was arrested via the warrant on September 6, 2005. A violation hearing was held and the defendant's conditions were modified to include 180 days residency at the Volunteers of America (VOA) Community Corrections Center. On

April 10, 2006, Ms. Turner completed VOA residency as ordered by the Court.

On April 24, 2006, the defendant reported to the probation officer as instructed. During that office visit, she was given specific instructions to begin calling and reporting for random urine collection at VOA. It was further explained she was enrolled in Phase I urine testing which meant she would be required to submit a random specimen at least four times per month. Ms. Turner expressed an understanding as she was already familiar with random urine collection at VOA. Since that time, the defendant has failed to report for random urine collection on the following dates: 5/4/06; 5/6/06; 5/9/06; 5/11/06; 5/13/06; and 5/16/06. In short, she has not reported for any random urine collection at VOA since her release from the facility on April 10, 2006.

**3                   The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month.**

During the aforementioned office visit on April 24, 2006, the importance of securing/maintaining steady employment was discussed. Ms. Turner expressed an understanding and agreed to follow-up on potential job leads. She was instructed to contact the probation officer the following week for an update on her employment search. The defendant failed to contact the probation officer as instructed.

Several attempts were made to contact Ms. Turner via phone calls and unannounced home visits. According to her family members, messages were given to the defendant to contact the probation officer; however, she failed to do so. On May 12, 2006, the probation officer visited Ms. Turner's alleged residence at 2444 N.. Harding Street, Indianapolis. Although she was not present, her mother (Mrs. Boler) called the defendant's daughter's residence in the presence of the probation officer. Mrs. Boler confirmed Debra Turner was in act at that residence. She left a specific message per the probation officer to report to the Probation Office on May 13, 2006, at 8 a.m. In addition, an Appointment Notice to that effect was also left for the defendant. She failed to report as instructed. To date, Ms. Turner has neither reported nor contacted the probation officer since the April 24, 2006, office visit.

**4                   The defendant shall notify the probation officer at least ten days prior to any change in residence or employment.**

As previously indicated, Ms. Turner stated she resides with her parents at 2444 N. Harding Street, Indianapolis. On May 16, 2006, the probation officer spoke with a family member of that dwelling who confirmed she did not live at that address. When asked her present whereabouts, the family members responded, "Honestly, I really don't know where she stays." The defendant failed to notify the probation officer of a change in residence.

**5                   The defendant shall pay a \$200 special assessment. The defendant shall also pay restitution (joint and several) in the amount of \$24,057.30.**

Ms. Turner has made no payments toward her Court-ordered financial obligations while on supervised release. On October 2, 2004, a payment of \$25 was applied toward her special assessment during the imprisonment portion of her sentence.

3. Ms. Turner was placed under oath and admitted the above specifications of violation of her supervised release.

Counsel for the parties stipulated the following:

(1) Ms. Turner has a relevant criminal history category of III. *See*, U.S.S.G. §7B1.4(a).

(2) The most serious grade of violation committed by Ms. Turner constitutes a Grade B violation, pursuant to U.S.S.G. §7B1.1(b).

(3) Pursuant to U.S.S.G. §7B1.4(a) upon revocation of supervised release the range of imprisonment applicable to Ms. Turner is 8-14 months.

(4) The parties agreed on the appropriate disposition of the case as follows:

The defendant be sentenced to a period of confinement of 13 months to the custody of the Attorney General, with no supervised release to follow.

The Court, having heard the admissions of the defendant, the stipulations and evidence submitted by the parties, and the arguments and discussions on behalf of each party, **NOW FINDS**

that the defendant violated the above-delineated conditions of her supervised release. The defendant's supervised release is therefore **REVOKED** and she is sentenced to the custody of the Attorney General or his designee for a period of 13 months, with no supervised release to follow. The service of the sentence shall begin immediately. The Court recommends that the defendant be subject to the Bureau of Prisons' extensive drug and alcohol treatment program during commitment.

The Magistrate Judge requests that Mr. Wharton, U. S. Parole and Probation Officer, prepare for submission to the Honorable Sarah Evans Barker, Judge, as soon as practicable, a supervised release revocation judgment, in accordance with these findings of facts, conclusions of law and recommendation.

Counsel for the parties and Ms. Turner stipulated in open Court waiver of the following:

1. Notice of the filing of the Magistrate Judge's Report and Recommendation;
2. Objection to the Report and Recommendation of the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §636(b)(1)(B); Rule 72.b, *Federal Rules of Civil Procedure*, and S.D.Ind.L.R.72.1(d)(2), *Local Rules of the U. S. District Court for the Southern District of Indiana*.

The District Court may refuse to accept the stipulations and waivers and conduct a revocation hearing pursuant to Title 18 U.S.C. §3561 *et seq.* and Rule 32.1 of the *Federal Rules of Criminal Procedure* and may reconsider the Magistrate Judge's Report and Recommendation, including making a *de novo* determination of any portion of the Report or specified proposed findings or recommendation upon which he may consider.

**WHEREFORE**, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above report and recommendation revoking Ms. Turner's supervised release and the sentence imposed of imprisonment of 13 months in the custody of the Attorney General or his designee; that the

defendant be subject to the Bureau of Prisons' extensive drug and alcohol treatment program during commitment; and that at the conclusion of Ms. Turner's incarceration, she not be subject to supervised release.

**IT IS SO RECOMMENDED** this 13<sup>th</sup> day of June, 2006.

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Kennard P. Foster, Magistrate Judge  
United States District Court

Distribution:

Steve DeBrotta,  
Assistant United States Attorney  
10 West Market Street, #2100  
Indianapolis, IN 46204

William Dazey,  
Office of Indiana Federal Community Defender  
111 Monument Circle, #752  
Indianapolis, IN 46204

U. S. Parole and Probation

U. S. Marshal Service